

HOUSE BILL 71

By Lamberth

AN ACT to amend Tennessee Code Annotated, Title 12,
Chapter 3, Part 5, relative to contracts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 12-3-514(b), is amended by adding the following language before the last sentence of the subsection:

A protest based upon the cancellation of a solicitation, in whole or in part, is not actionable and must not be considered. A protest may be filed electronically or by hard-copy with the chief procurement officer, subject to the policies and procedures adopted by the procurement commission. A protest filed electronically must be considered timely upon successful transmission.

SECTION 2. Tennessee Code Annotated, Section 12-3-514(d), is amended by deleting the subsection and substituting:

(d) A party who submits a protest to the chief procurement officer, or who submits an appeal of a protest decision to the protest committee, must contemporaneously submit a protest bond. Without a contemporaneously submitted protest bond, such a protest or appeal is not actionable. As determined by the chief procurement officer, a protest bond must be payable to this state in the amount of:

- (1) Five percent (5%) of the lowest bid or cost proposal evaluated;
- (2) Five percent (5%) of the maximum liability or estimated maximum liability provided in the solicitation;

(3) Five percent (5%) of the estimated maximum revenue, if the solicitation, award, or proposed award is for a contract in which this state receives revenue; or

(4) For no-cost contracts, an amount to be determined by the chief procurement officer.

SECTION 3. Tennessee Code Annotated, Section 12-3-514(g), is amended by adding the following language after the first sentence:

The petition may be submitted electronically or by hard-copy, subject to the policies and procedures adopted by the procurement commission.

SECTION 4. Tennessee Code Annotated, Section 12-3-514(h), is amended by adding the following language after the third sentence:

A petition for exemption from the requirement to post a protest bond under subsection (d) may be submitted electronically or by hard-copy, subject to the policies and procedures of the procurement commission.

SECTION 5. Tennessee Code Annotated, Title 12, Chapter 3, Part 5, is amended by adding the following as a new section:

(a) A state governmental entity shall not enter into a contract subject to the operation of this chapter that contains a term or condition that:

(1) Requires this state or a state governmental entity to:

(A) Defend, indemnify, or hold harmless another person;

(B) Assume liability for an act or omission against a person,

except as specifically provided in the contract or as otherwise provided by law;

(C) Be bound by terms and conditions that are unknown to this state at the time of signing such contract or that may be unilaterally changed by another party;

(D) Pay liquidated damages; or

(E) Pay taxes, except as may be required by law;

(2) In litigation about a term of the contract, permits a person, other than the attorney general and reporter, to serve as legal counsel for this state or a state governmental entity, except as provided in § 8-6-106;

(3) Establishes the venue for an action or dispute with this state or a state governmental entity in a jurisdiction other than the Tennessee claims commission, the chancery courts of Davidson County, and federal courts in this state;

(4) Provides that the contract must be construed in accordance with the laws of a state other than this state;

(5) Requires binding arbitration; or

(6) Contains an automatic renewal obligating state funds subsequent to the initial term of the contract.

(b) If a contract entered into by a state governmental entity that is subject to the authority of the chief procurement officer under this chapter or title 4, chapter 56, contains a term or condition prohibited under this section, then such term or condition is void, and the contract is enforceable as if the contract did not contain such term or condition.

(c) The chief procurement officer may promulgate rules to effectuate the purposes of this section.

SECTION 6. If a provision of this act or the application of a provision of this act to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 7. This act takes effect upon becoming a law, the public welfare requiring it, and applies to all contracts to which title 12, chapter 3, part 5, apply that are entered into on or after the effective date of this act.